

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

01 MAR 15 PM 2:56

RICKY D. HAYES, Individually, }
and as Father and Next Friend }
of Michael D. Hayes, }
deceased, }

Plaintiff, }

v. }

CSX TRANSPORTATION, INC., }

Defendant. }

CIVIL ACTION NO.

CV-01-AR-0622-S

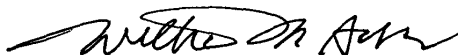
ENTERED

MAR 15 2001

MEMORANDUM OPINION

Before the motion to remand filed on March 14, 2001, by plaintiff, Ricky D. Hayes, individually and as father and next friend of Michael D. Hayes, deceased, was brought to the attention of the court, the court had already drafted the memorandum opinion attached hereto as Exhibit "A". For the reasons therein stated, plaintiff's motion to remand will be granted.

DONE this 15th day of March, 2001.



WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

4

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RICKY D. HAYES, Individually, }	
and as Father and Next Friend }	
of Michael D. Hayes, }	
deceased, }	CIVIL ACTION NO.
Plaintiff, }	CV-01-AR-0622-S
v. }	
CSX TRANSPORTATION, INC., }	
Defendant. }	

MEMORANDUM OPINION

This court being a court of limited jurisdiction, it is required to examine its own subject matter jurisdiction upon the removal of a case to this court from a state court, even without a motion to remand. It appears from the face of the removal documents in this case that plaintiff did not voluntarily dismiss his action against a non-diverse defendant, meaning, of course, that plaintiff's right to appeal from the state court's recent grant of summary judgment in favor of that non-diverse defendant can only be preserved if the case remains in the state court. It goes without saying that the diversity jurisdiction of this court depends not only upon the existence of an amount in controversy exceeding \$75,000, but that the plaintiffs and the defendants be citizens of different states. Plaintiff has the right to choose

EXHIBIT "A"

his forum and to stay there unless he **voluntarily** creates procedural facts upon which a removal by defendant or defendants can legitimately be based.

An appropriate separate order of remand will be entered.

DONE this _____ day of March, 2001.

WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE